WP(C) 1430/2007
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI

Heard Mr. R Kalita, learned counsel for the petitioner; Mr J Patowari, learned Standing Counsel, PWD and Mr N Dutta, learned senior counsel for the respondent No.4 assisted by Mr P Borthakur, learned counsel.

The grant of a contract for construction of Rural Block Health Pooling Complex at Chapar in Dhubri district in favour of the respondent No.4 by the order dated 28.2.2007 passed by the Chief Engineer, PWD (Building), Assam has been assailed in this writ petition.

The short case projected by the petitioner is that pursuant to the NIT dated 22.1.2007, four tenderers in all, including the writ petitioner and the respondent No.4 submitted their respective bids for the work in question. On opening of the tenders submitted, the offer made by the petitioner was found to be the lowest, being 2% above the scheduled rate. The offer of the other three tenderers were same i.e. 4% above the scheduled rate. As the petitioner in his comprehension had made a better offer, the grant of contract in favour of the respondent No.4 has been contended to be legally unsustainable. The petitioner has also averred in para 4 of the writ petition that the tender submitted by the respondent No.4 is incomplete and in any case the said respondent did not fulfill the requirements spelt out by the NIT to the effect that the tenderer must have been engaged in one single group of building work of the value of Rs. 30,00,000/- and above.

The learned Standing Counsel, PWD has placed the records in original to justify the award of contract in favour of the respondent No.4. The attention of the Court has been drawn in particular to a document in which the technical parameters of the bids submitted by the different tenderers have been recorded. The attention of the Court has also been drawn to the order passed on the body of the comparative statement prepared wherefrom it appears that the contract in question was awarded in favour of the respondent No.4 at the rate quoted by the lowest bidder i.e. Rs. 76,96,182/-.

The order granting the contract in favour of the respondent No.4 as appearing in the body of the comparative statement does not disclose any reason as to why the lower bid of the petitioner was ignored and for that matter why the other two tenderers who had also quoted the same amount as the respondent No.4 were not chosen for the grant. However, a reading of the document recording the technical parameters of the different bids would go to show that in so far the petitioner is concerned, he had failed to comply with the requirements of Clause 4.3.(iv) of the NIT which required a bidder to submit a list of equipments available with the bidder which were proposed to be deployed in the construction work. Similarly, the petitioner also failed to indicate the liquid assets and credit facilities which was stipulated to be of the minimum amount of Rs. 7.50 lakhs. The respondent No.4 on the other hand had complied with all the requirements and had submitted all requisite documents as stipulated in the NIT. In so far the other two tenderers are concerned, it is evident that both the tenderers also failed to satisfy the requirements under different clauses of the NIT, the details of which are not being recorded in the present order as the aforesaid two tenderers are not parties to the present proceeding.

In so far as the objection of the petitioner to the eligibility of the respondent No. 4 on the ground of not having performed similar works of the value of Rs. 30,00,000/- and above during the past one year is concerned, it is clear that the requirement of Clause 4.5.A(a) of the NIT stipulating annual turn over of the minimum of Rs. 75 lakhs from Civil Engineering work in one year during the last five years have been met by the respondent No.4 whose annual turn over during the year 2003-04 was Rs. 93.09 lakhs.

The facts stated above make it abundantly clear that the respondent authority on evaluation of the bids submitted by the different tenderers was confronted with a situation where only the offer made by the respondent No.4 was found to be in compliance with the requirements of the NIT. In such a situation, if the respondent authority insisted that the respondent No.4 should bring down his offer to the offer made by the lowest bidder and the respondent No.4 having agreed to do so, granted the contract to the respondent No.4 at the lowest offer, such action will not be contrary to any known principle of law. Rather, the Court must view such action in bringing down the price to be in public interest. As the offer of the respondent No.4 was the only valid offer and if in such circumstances, he was awarded the contract at the rate quoted by the lowest tenderer, the Court must hold that the award made in favour of the respondent No.4 does not suffer from any fundamental flaw which would require correction at the hands of the Court.

For the aforesaid reasons finding no merit in this writ petition, I dismiss the same. Interim order, if any, passed earlier stands vacated. However, in the facts and circumstances, the Court does not consider it appropriate to impose any cost on the petitioner.